

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 20882
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On January 4, 2008, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted](Petitioner) asserting income tax, penalty, and interest in the amount of \$ 47,968 for the 2002, 2004, 2005, and 2006 taxable years. The Notice advised the Petitioner that, if he disagreed with the deficiency determined by the Bureau, he could petition the Tax Commission for a redetermination.

The Petitioner sent a letter dated January 8, 2008, which the Commission treated as a petition for redetermination. In letters dated February 8, 2008, and March 26, 2008, the Commission notified the Petitioner that he could meet with a Commissioner or a designee in an informal conference to discuss the deficiency determined by the Bureau, or, in the alternative, submit additional information to show why the deficiency should be redetermined. In a letter dated March 28, 2008, the Petitioner informed the Commission that he did not want to personally appear for a hearing.

This decision is based on the information contained in the Commission's files including information supplied by the Petitioner regarding the [Redacted] and [Redacted] documents. The Commission has reviewed the files, is advised of their contents, and now issues this decision. For the reasons set forth below, the Commission affirms the deficiency determined by the Bureau with interest updated through May 31, 2008.

The Petitioner did not file an Idaho individual income tax return for the 2002, 2004, 2005 and 2006 taxable years. Instead, the Petitioner filed Form 66, "Idaho Fiduciary Income Tax Return" for the years in question. On Form 66, the Petitioner showed Idaho adjusted income of \$112,580 for 2002, \$87,313 for 2004, \$52,210 for 2005, and \$181,363 for 2006. This amount was also shown on Form 66 to be distributed to beneficiaries.

The Tax Discovery Bureau disregarded the trust and prepared provisional returns for the Petitioner based on the trust's reported income. The Bureau provided the Petitioner with personal deductions, exemptions, and grocery credits. Once completed, the provisional returns showed a tax deficiency existed for each of the years at issue. The Bureau then issued a Notice of Deficiency Determination which included a description of the information relied upon, a copy of the provisional returns, a document showing the calculation of interest, and an explanation of the Petitioner's right to request a redetermination of the deficiency.

The Petitioner responded to the Notice of Deficiency Determination by sending a letter in which he explained he did not have any reported individual income. He further stated that he filed Form 66, "Idaho Fiduciary Income Tax Return" for each of the years in question. The letter was treated as a timely protest of the Notice of Deficiency Determination.

The Petitioner is self employed and owns [Redacted]. The Petitioner filed Idaho individual income tax returns in 2000 and 2001. In 2002, 2004, 2005, and 2006, the Petitioner filed an Idaho fiduciary income tax return in which he is named as the trustee. He included Idaho adjusted gross income on each of the fiduciary returns. The Petitioner also included the income amount as the same amount that was distributed to beneficiaries. In correspondence with the Tax Commission, the Petitioner explained that the trust was established in [Redacted], the year of his birth. He further explained that he did not have a copy of the trust document, did not

know its creator or its beneficiaries, and did not know the purpose of the trust. However, he acknowledged that he is the current trustee of the trust.

The Petitioner appears to be using a trust with no purpose and no known beneficiaries as a way to avoid individual income tax. He stated that he had no knowledge of the beneficiaries of the trust, yet on Form 66, he showed distributions to beneficiaries. The Petitioner also acknowledged that he is the trustee of the trust. As a fiduciary of the trust, the trustee has a duty of good faith in managing the trust. The trustee cannot manage a trust when it has no knowledge of its creator's intent in establishing the trust, no knowledge of its beneficiaries, and has never seen the actual trust document. It appears that the Petitioner, as trustee, has unqualified discretion in managing the trust's assets. Under these circumstances, no trust can exist.

The Petitioner also supplied the Tax Discovery Bureau with copies of ads and documents from [Redacted]. [Redacted] is a leading organization in the tax protester movement and was founded by [Redacted], a high profile tax protestor. In April of 2007, the United States Department of Justice filed a law suit against [Redacted] to stop the sale of an alleged tax fraud scheme. The Court issued an injunction permanently barring [Redacted] from advising or instructing persons that they are not required to file federal tax returns or pay federal tax including selling or furnishing any materials purporting to enable individuals to discontinue or stop withholding or paying federal tax. The Court also required that names and contact information of every person who received materials on how to stop paying tax be turned over to the government. The United States Court of Appeals for the Second Circuit affirmed the injunction in February of 2008. On April 7, 2008, the government filed a motion to hold [Redacted] in contempt of court for failure to comply with the court order requiring disclosure of

the names and contact information of the individuals receiving tax materials from the Foundation.

When a person fails to file a tax return or to pay the proper amount of individual income tax, Idaho law specifically provides the Commission with the authority to issue a Notice of Deficiency Determination. The basis of the Notice of Deficiency in this case is the Petitioner's adjusted Idaho income as reported on Form 66. The Petitioner has not presented any information to dispute this factual basis of the deficiency determination. It is well settled in Idaho that a Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be correct. *Albertson's Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814 (1984); *Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the taxpayer to show that the tax deficiency is erroneous. *Id.* The Petitioner has failed to show that the provisional returns prepared by the Tax Commission were incorrect. Therefore, based on the information available, the Tax Commission finds the provisional returns to be a fair representation of the Petitioner's taxable income for the taxable years in question and that the amounts shown due on the Notice of Deficiency Determination are true and correct.

WHEREFORE, the Notice of Deficiency Determination dated January 4, 2008, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the Petitioner pay the following tax, penalty, and interest.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$ 7,896	\$1,974	\$2,485	\$12,355
2004	5,895	2,948	1,190	10,033
2005	3,130	1,565	443	5,138
2006	13,242	6,621	1,045	<u>20,908</u>
				\$48,434

Interest is calculated through May 31, 2008, and will continue to accrue until paid.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.

\_\_\_\_\_